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UNFAIR METHODS OF COMPETITION, WITHIN THE FEDERAL TRADE COMMISSION ACT.

In enacting the Federal Trade Commission Act, Congress evidently deemed it advisable to leave the "unfair methods of competition" declared unlawful thereby, without precise definition, and to have each case determined upon its own facts, owing to the multifarious means by which it is sought to effectuate such schemes.

It is held to be within the power of the Federal Trade Commission to make an order forbidding any practice having a dangerous tendency unduly to hinder competition or to create monopoly (Federal Trade Commission v. Beech-Nut Packing Co., 42 Sup. Ct. 150). The object of the Act seems to be, first, the protection of the public; second, the protection of business concerns which carry on business fairly. Incidentally, the protection of the latter has the effect also of protecting the public. It might be stated that a fair test of the Federal Trade Commission's jurisdiction is whether the practice complained of tends injuriously, directly or indirectly, to affect the public. The practices of some concerns in actively pushing the sale of their goods have been complained of, when in fact their conduct constituted real competition, with which the public had no concern. Thus, the practice of sellers making gifts and giving entertainments to employees of customers and prospective customers, was held not to constitute unfair methods of competition within the Act (New Jersey Asbestos Co. v. Federal Trade Commission, 264 Fed. 509). This case held that such practice was a matter between the individuals concerned and not one so affecting the public as to give the Commission jurisdiction.

"Any plan or scheme to advance one kind of goods and to keep back another is a matter wholly and absolutely under the control of the merchant (retailer) in meeting his problems in his competition, and does not constitute a fraud, nor is it unfair to any one who does not own the goods. Likewise the public, if it has an interest in competition has such interest only in the competition between different merchants. It has no right to demand for itself that a merchant shall set up a competition in his own house and between his own goods. The channels of trade that must be kept open for the manufacturer are those that run between him and other manufacturers, and necessarily end when he has sold. The channels of trade that must be kept open for the buying public do not run through the retailer's store, but do run between the different stores seeking the favor of the buying public" (Kinney-Rome Co. v. Federal Trade Commission, 275 Fed. 665, 669).

Contracts made between wholesale vendors of oil products and retailers in which the latter agreed to lease a pump, tank, or other equipment for handling petroleum products at a rental which would not yield a reasonable profit on its cost, and to use such pump, tank, or other equipment only for storing or handling the products of the lessor, are not forbidden by the Act (Standard Oil Co. v. Federal Trade Commission, 273 Fed. 478, 17 A. L. R. 389). In the opinion of the Court in this case it was said that, "It is not a conclusion of law, from any facts here found, that a system which, at least, is keenly competitive, extremely advantageous to the public, and, in the opinion of a majority of the competent witnesses, economical, is at present unfair to anyone or unfair because tending to monopoly."

It was held, in Curtis Pub. Co. v. Federal Trade Commission (270 Fed. 881), that the Curtis Publishing Co. did not engage in an unfair method of competition in requiring its distributing agents to agree

not to act as agents for or to supply at wholesale rates any periodicals other than those published by Curtis & Co.

The unfair methods of competition which the Federal Trade Commission is empowered to condemn and suppress are held to embrace a resale-price plan adopted by a manufacturing corporation, in so far as in its practical operation, though without agreement, express or implied, it necessarily constrains the jobber, wholesaler, or retailer, if he would have the company's products, to maintain the prices "suggested" by it (Federal Trade Commission v. Beech-Nut Packing Co., 42 Sup. Ct. 150, reversing 264 Fed. 885).

A case involving the question of false labels as unfair competition is treated in 95 C. L. J. 97, issue of Aug. 11, 1922.

NOTES OF IMPORTANT DECISIONS

ALIEN MAY BE EXCLUDED FROM PRIVILEGE OF OPERATING MOTOR BUSSES AS COMMON CARRIER.—Authority to use the public highways as a common carrier of passengers for hire is not a right belonging to the individual, but is in the nature of a privilege, so held in Gizzarelli v. Presbrey, R. I., 117 Atl. 359. In this case the Court passed upon the validity of an ordinance requiring a license for operation of motor busses in the city and prohibiting the issuance of such a license to one who is not a citizen of the United States. The Court upheld the ordinance, declaring that it was not in conflict with the Fourteenth Amendment of the Federal Constitution, which entitles all persons within jurisdiction of the United States to the equal protection of the laws. We quote as follows from the opinion of the Court:

"Due consideration for the safety of the public requires that a careful selection should be made of the individuals to whom authority is given to use the public highways as carriers of passengers for hire. We think it fairly may be said that, as aliens as a class are naturally less interested in the state, the safety of its citizens, and the public welfare than citizens of the state, to allow them to operate motorbuses would on the whole tend to increase the danger to passengers and to the public using the highways. It is clear that we cannot say that the evil to be apprehended and the proposed remedy are so dissociated as to warrant the court in holding the ordinance to be invalid. As there is a basis for the distinction made between citizens and aliens and for such a classification as made, the ordinance is not repugnant to the Fourteenth Amendment of the Constitution of the United States, nor is it in violation of the treaty with Italy. Crane v. People of State of New York, 239 U. S. 195, 36 Sup. Ct. 85, 60 L. Ed. 218; Heim v. McCall, 239 U. S. 175, 36 Sup. Ct. 78, 60 L. Ed. 206, Ann. Cas. 1917B, 287; Trageser v. Gray, 73 Md. 250, 20 Atl. 905, 9 L. R. A. 780, 25 Am. St. Rep. 587. In no event can petitioner's rights be greater than those of citizens of other states of the Union. The power of the state in proper cases to make a distinction between its own citizens and citizens of other states has frequently been upheld. For instance, the state can prohibit citizens of other states in the Union from taking oysters in the navigable waters of the state (State v. Medbury, 3 R. I. 138); from catching lobsters within the jurisdiction of the state (State v. Kofines, 33 R. I. 211, 80 Atl. 432, Ann. Cas. 1913C, 1120); can prohibit nonresidents from catching fish for the manufacture of manure and oil and the manufacture of manure and oil from fish caught within the waters of the state (Chambers Bros. v. Church & Co., 14 R. I. 398, 51 Am. Rep. 410). The right of the state to deny to aliens the right to practice law is undoubted. 1 R. C. L. 803."

CONDITIONS IN CONTRACTS IMPLIED BY LAW.—The above is the title of an editorial appearing in 95 C. L. J. 115. Since that editorial was written there has been reported the case of Nitro Powder Company v. Agency of Canadian Car & Foundry Company, 233 N. Y. 294, 135 N. E. 507. which involves this question. In this case it appears that defendant made a contract to sell to plaintiff a quantity of TNT, a highly explosive war material. The contract expressly provided that the seller was only to deliver the quantity reclaimed from certain specific shells located at a certain place, and need not replace a shortage if the quantity was reduced by fire, explosion, government taking over the material, or any cause beyond the control of the seller. The court held that the defendant was not liable for failure to deliver the TNT where its failure was the result of the government requisitioning the material, and that therefore plaintiff could not recover from defendant the difference between the contract price and the higher price received from the government.

After stating the general rule, which is set forth in the editorial, the Court goes on to say:

"The subject matter of the contract was the quantity of material reclaimed from Russian shells as that quantity might be reduced by government taking over the material. The contract is in terms conditional on governmental inaction and subject to the conditions that if the government should requisition the goods and render it impossible that the seller should perform its contract, performance should be excused. The taking by government completely frustrated the contract because it left no material upon which the contract could operate. As soon as the material was taken, defendant

was released from all obligation to the plaintiff. Defendant had no control over the situation. It merely acquiesced in action which it had no power to stop. Plaintiff could not therefore recover the difference between the conditional contract price and the government price (The Claveresk, C. C. A., 264 Fed., 276; The Isle of Mull, C. C. A., 278 Fed. 131).

"The fact that the defendant sought or welcomed the taking of the TNT by the government is immaterial. It was not bound to say to the government representative: 'You must wait until we deliver to plaintiff and then make your requisition on it.'

"Sovereignty is not thus dealt with. Such an exhortation would have been futile.

"'It was not the defendant or its officials who created the situation. It was the Government of the United States, acting through its army officers' (Mawhinney v. Millbrook Woolen Mills, 231 N. Y., 290, 300, 132 N. E., 93, 96, 15 A. L. R., 1506)."

ORGANIZERS OF TRUST ESTATE HELD LIABLE AS PARTNERS.—In Graham Hotel Corporation v. Leader, 241 S. W. 700, decided by the Court of Civil Appeals of Texas, suit was brought against the so-called hotel corporation, the petition alleging that it was a partnership composed of certain designated persons, and the main question involved was as to the liability of the persons mentioned for a debt incurred by the hotel corporation. There was testimony that the alleged partners had entered into an agreement to build and operate a hotel; that the hotel company was to be incorporated when all of the stock was sold; that preliminary to this being done, the parties organized a trust estate, elected themselves trustees and officers, and then proceeded to try to sell the corporate stock. The Court held that under this arrangement the parties were liable as partners for any debts incurred to any one who was, at least, without notice of any limitation as to the liability of the parties for debts incurred in the organization of the corporation.

ZONING LAW UPHELD.—In Schait v. Senior, 117 Atl. 517, the Supreme Court of New Jersey upholds a statute authorizing towns in the exercise of the police power to enact zoning ordinances to promote the public health, safety and general welfare. The Court also holds that an ordinance, enacted under the authority of this statute prohibiting the erection of a garage or group of garages, for more than five motor vehicles, on any lot situated within a radius of two hundred feet of, or within any portion of a street between two intersecting streets, in which portion there exists a public school or a church, is a reasonable regulation and is within the scope of the police power contemplated by the statute mentioned.

POSSIBLE AND NEEDED REFORMS IN THE ADMINISTRATION OF CIVIL JUSTICE IN THE FEDERAL COURTS.

By the Hon. William Howard Taft,
Chief Justice of the United States

I hope you feel in a proper state of mind this morning, in view of the roof under which you are gathered. I don't know any reason why the distinction was made by which Lord Shaw of Dunfermline should speak in a place where athletic contests had theretofore been had, and I should be assigned to this sacred structure. It was doubtless because they knew that Lord Shaw could be trusted anywhere. I am sorry that we have not had the benefit of this fine church auditorium for all the sessions. I feel in speaking here as if I were enjoying an undue privilege, as if it were denying to others the equal protection of the law, not to give them the same opportunity. However, I shall need your prayers and all your self-restraint to keep your attention to what I have to present to you this morning, because it is going to be dry to the point of satisfying the Anti-Saloon League.

For many years, the disposition of business in the Federal courts of first instance was prompt and satisfactory. This was because the business there was limited, and the force of judges sufficient to dispose of it; but of recent years the business has grown because of the tendency of Congress toward wider regulation of matters plainly within the federal power which it had not been thought wise theretofore to subject to Federal control. More than that, the general business of the country, and the consequent litigation growing out of it, has increased, so that even in fields always occupied by the Federal courts, the judicial force has proved inadequate. In this situation, the war came on, statutes were multiplied, and gave a special stimulus to Fed-

(1) An address delivered at the 1922 meeting of the American Bar Association.

eral business. Since the war there has been a great increase of crimes of all kinds throughout the country. This within the federal jurisdiction has included depredations on interstate commerce, schemes to defraud in which are used facilities furnished by the general government.

Then under the inspiration of the war, traffic in intoxicating liquors was forbidden, and under the same inspiration the 18th Amendment was passed and the Volstead law was put upon the statute books. Prosecutions under this law alone have added to the business in the federal courts certainly ten per cent; while cases growing out of the income and other war taxation, out of war contracts and claims against the government, have made discouraging arrears in many congested centers. The criminal business has usually been first attacked, and the effort to dispose of it has in many jurisdictions completely stopped the work on the civil side.

The Attorney General, properly as it seems to me, conceived that the first step to take was the creation of new judgeships. A bill was introduced in both Houses for the addition of 18 district judges to the judicial force, two for each circuit, who were not to be assigned to any district, but were to be subject to call to any district in the circuit in which they were appointed, to assist the existing district judges. In addition, these judges and the existing district judges were made subject to assignment from one circuit to another where the business required it. The suggestion of a flying squadron of judges did not meet with approval in the House of Representatives, and the Judiciary Committee of that body preferred to add local district judges for the districts where the congestion was most apparent.

Accordingly a bill was put through which made the judges in twenty-one districts. The bill when it reached the Senate was modified somewhat. The bill went to conference, and a bill which provides for twenty-four new district judges and one circuit judge in the Fourth Circuit has been reported to both houses. It is opposed, and will doubtless lead to discussion; but in view of the previous votes in the two Houses, it seems likely that the bill will pass before the close of this Congress.[2]

Judicial Council Provided

The bill contains a very important provision, which it seems to me will make for expedition and efficiency. While the districts which receive new judges are those in which additions to the judicial force are most needed, there are arrears in other districts and the delays and defeats of justice are not confined to the normal jurisdiction of the twenty-four new judges. The new bill authorizes a judicial council of ten judges, consisting of the Chief Justice and the senior associate judge of each circuit, which is to meet in Washington the last Monday in September, to consider reports from each district judge with a description of the character of the arrears, and a recommendation as to the extra judicial force needed in his district. The conference thus called is to consider at large plans for the ensuing year by which the district judges available for assignment may be best used. The senior circuit judge of each circuit is given authority to assign any district judge of one district to any other in his circuit, while the Chief Justice is given authority to assign any district judge in one circuit to a district in any other circuit, upon request of the senior circuit judge of the circuit to which the district judge is to be assigned, and the consent of the senior circuit judge of the circuit from which he is to be taken.

These provisions allow team work. They throw upon the council of judges, which is to meet annually, the responsibility of making the judicial force in the courts of first instance as effective as may be. They make possible the executive application of an available force to do a work which is distributed unevenly throughout the entire

(2) The bill has since passed both Houses.

country. It ends the absurd condition, which has heretofore prevailed, under which each district judge has had to paddle his own canoe and has done as much business as he thought proper. Thus one judge has broken himself down in attempting to get through an impossible docket, and another has let the arrears grow in a calm philosophical contemplation of them as an inevitable necessity that need not cause him to lie awake nights. It may take some time to get this new machinery into working operation, but I feel confident that the change will vindicate itself. The application of the same executive principle to the disposition of legal business in the municipal courts of certain cities, and in the courts of some states, has worked well. Although the whole United States is a more difficult field in which to apply it, there would seem to be no reason why its more ambitious application should not prove useful.

A good many objections, I may state informally, have been made to that feature of the bill. It is thought that it imparts too much power to the council of judges, and especially to the Chief Justice. Gentlemen have suggested that I would send dry judges to wet territory and wet judges to dry territory, oblivious of the fact that the Chief Justice has not the means of assigning them to any particular work in any district to which he may assign them, and that assignment to cases must necessarily be made by the local circuit judge who is in charge, and oblivious of the fact also that it is only by the consent of the two circuit judges that he can act. It nevertheless did serve to call out in the discussion references to Jeffreys, and other notorious judges in the history of our profession, that did not seem to be altogether complimentary to those to whom the references were applied.

The Appellate Courts.

Second, I come to the appellate business in the Federal system. In the old days when business was light in all the Federal courts, the appeals and writs of error that were taken to the Supreme Courts were not sufficiently numerous to occupy the full time of the Supreme Court and the Justices were able to do a large amount of circuit work. Indeed, under the statute, until recent years, a circuit justice was required to visit each district in the circuit to which he was assigned, once in two years. As the appellate business grew, however, this rule became more honored in the breach than in the observance, and it has now been properly repealed. Its existence, however, showed that there was a time when its obligation was not unreasonable.

In 1891 a new intermediate court was created—the Circuit Court of Appeals, one to each circuit—and the circuit judges were ultimately increased so as to give three or more circuit judges for each court of appeals, except that of the Fourth circuit where there are only two. Appeals were allowed from the courts of first instance to the Circuit Court of Appeals, and, speaking generally, the judgments of the new court in cases depending on diverse citizenship, patent cases, admiralty cases and criminal cases, by this and subsequent legislation, were made final. This very radical change was made necessary by the arrears in the Supreme Court, which put the Court three years behind in the disposition of its cases. The new system worked a great reform, and the Court was able to catch and keep up with its business until within recent years. Now there is an interval of fifteen months between the time that a case is filed in the Court and its hearing. This is due not alone to the number of cases filed, but is due to the fact that with the increasing number of cases in which emergent public interest demands that a speedy disposition be had, many cases are taken out of their order and are advanced. Much of the time of the Court is consumed in the hearing of such cases and the regular docket is delayed.

The members of the Supreme Court have become so anxious to avoid another congestion like that of the decade before 1891, that they have deemed it proper themselves to prepare a new bill amending the jurisdiction of the Supreme Court and to urge its passage. It is now pending in both Houses of Congress. The act of 1891 introduced into the appellate system a discretionary jurisdiction of the Supreme Court over certain classes of cases. It proceeded on the theory that so far as the litigants were concerned, their rights were sufficiently protected by having one trial in a court of first instance, and one appeal to a court of appeal, and that an appeal to the Supreme Court of the United States should only be allowed in cases whose consideration would be in the public interest. Accordingly under existing law, appeals in diverse citizenship cases, in patent cases, in bankruptcy cases, in admiralty cases, and in criminal cases, can now reach the Supreme Court for review only when that Court shall, after consideration of the briefs and record, deem it in the public interest to grant the writ of certiorari. By the act of 1916, this discretionary power of the Court was extended and its obligatory jurisdiction reduced, as to review of state court judgments, so that now the only questions which can come by writ of error from a state court to the Supreme Court as a matter of right, are those in which the validity of a state statute or authority or of a federal statute or authority under the Constitution has been the subject of consideration by the state court, and has been sustained in the former, or denied in the latter case. All constitutional questions arising in the federal courts, that is, in the district courts or the Circuit Court of Appeals subject to review, may under existing law be brought to the Supreme Court as of right.

Supreme Court to Control Appeals

The new bill increases this discretionary appellate jurisdiction now vested in the Supreme Court so that no case of any kind can be taken from the Circuit Court of Appeals to the Supreme Court of the United States without application for a certiorari. Obligatory appeals from all other courts subordinate to the Supreme Court of the United States, from the Federal District Courts in a limited class of cases and from the State courts are also abolished and only review by certiorari is provided. This includes the Court of Appeals of the District of Columbia and the Court of Claims, as well as the Territorial courts. Direct appeals from the District Courts to the Supreme Court in jurisdictional and constitutional questions are abolished and such questions are to reach the Supreme Court only through the Circuit Court of Appeals. These changes, it is thought, will give the Supreme Court such control over the business that it can catch up with its docket.

The objection urged to the bill is that it gives the Supreme Court too wide discretionary power in respect to granting appeals, and that a thorough examination of the cases on the applications for certiorari is impossible.

The bill has been recommended by the members of the Court only after a very full consideration of the subject. They are convinced that it is the best and safest method of avoiding arrears on their docket. It does not need an extended and close argument upon the merits of a question to enable the Court to decide whether it is important enough in a public sense to justify its consideration.

It is not necessary upon such an application for the Court to decide the issues which were considered below. That is not what the certiorari should turn on. The court can quickly acquire knowledge of the nature of the questions in the case from the briefs filed. To allow an oral argument on such applications would be largely to defeat the purpose of the bill. Every brief presented is carefully examined by each member of the court and every case is voted on. I just want to emphasize that, because I am a witness.

The class of cases most pressed upon the Court for the writ of certiorari are not the cases that involve serious constitutional questions. The motive of the litigants in most cases is merely to get another chance to have questions of importance to them, but not of importance to the public, passed upon by another court.

The discretionary power of the Supreme Court in allowing appeals in certain cases coming from state Supreme Courts and involving Federal constitutional questions is very little enlarged by the new bill. The change in the new bill on this point was made rather to clarify the meaning of the existing law than to enlarge the Court's discretion, and if objected to may well be stricken out. The general power of certiorari in such constitutional questions was conferred in the act of 1916, and has been exercised ever since. It was granted because Congress found that counsel were often astute in framing pleadings in state courts to create an unsubstantial issue of Federal constitutional law and so obtain an unwarranted writ of error to the Supreme Court. It was, therefore, thought wise not to permit a writ of error as of right in any cases except in those in which the plaintiff in error could show that a state court had held a state statute valid which was said to be in violation of the Federal Constitution, or a Federal statute invalid for the same reason; and to require in all other cases of alleged violation of Federal constitutional limitation that the Supreme Court should be given a preliminary opportunity on summary hearing to say whether the claim made presented a real question of doubtful constitutional law, or was, on its face, unworthy of serious consideration in view of settled principles. It was thought that a court very familiar with such questions by constant application of them could in a summary hearing separate wheat from chaff and promptly end litigation, the continuance of which must do great injustice to the successful party below, and, what is more important, clog the docket and delay the hearing of meritorious causes.

As already said, the new bill extends the certiorari jurisdiction of the Supreme Court to constitutional questions which are decided by the Federal Circuit Courts of Appeal. This is an amendment of existing law which will substantially reduce the docket of the Supreme Court and is justified and required for the same reasons as those which led to the act of 1916. If in two Federal courts whose reason for being is to protect the rights of individuals against local prejudice in state courts, or against infraction of their Federal constitutional rights, a complainant is defeated, surely it is not conferring undue power upon the Supreme Court, whose members are engaged daily and for years in the consideration of such questions and their final adjudication, to provide a preliminary investigation into their seriousness and importance, before burdening that Court and its docket with a lengthy and formal hearing. The public and other litigants have rights in respect of frivolous and unnecessary consumption of the time of the Supreme Court which the use of the writ of certiorari seems to be the only practical method of preserving.

The Problem of Successive Appeals

Too many appeals impose an unfair burden on the poor litigant. Gentlemen, speed and despatch in business are essential to do justice.

Various methods have been adopted to limit appeals to courts of last resort. The costs have been made heavy. But that puts the privilege within the reach of the longer purse. Again classification by subject matter has been attempted, but this has not prevented clogging the docket with cases presenting no question of general interest or difficulty. In California, in Ohio, in Illinois, and in other states, the legislature has extended to the State Supreme Court a discretion, after preliminary and summary examination, to grant or deny appeals.

The failure of the Supreme Court to lay down definite rules for determining the cases in which certioraris should be granted has called for adverse comment. This is unjust. Certain general rules have been laid down. The writ is used to secure uniformity of decision in subordinate courts of appeal and to decide questions of general public importance which are not well settled. It is said that this is vague. But the very postulate upon which the discretion is granted is that definite rules for determining the appealable cases have not proved satisfactory, and that it is better to let the Supreme Court distinguish between questions of real public importance and those whose decision is only important to the litigants.

The members of the Court have recommended the new bill to Congress because they believe it to be the most effective way of speeding the disposition of causes before it and therefore speeding justice. The gain which the arrears have made upon the Court during this last year down to July 29th is represented by seventy cases, or eighteen per cent, and while the Court will make an effort to reduce its arrears, the prospect is, in view of the great additions to business in the subordinate courts. that the Court will fall further and further behind.

I may speak of a secondary reason why this bill should pass. The statutes defining the jurisdiction of the Supreme Court and of the Circuit courts of Appeal are not as clear as they should be. It is necessary to consult a number of them in order to find exactly what the law is, and I regret to say that without clarification by a revision, the law as to the jurisdiction of the Supreme Court, and of the Circuit Courts of Appeal, is more or less a trap, in which counsel are sometimes caught. This bill removes all technical penalties for mistaken appellate remedies.

Of course amendments could be made which would easily cut down the work of the Supreme Court, if Congress wishes to adopt a different function for the Federal courts than they now have. If it chooses to abolish the inferior federal courts or to take away their jurisdiction in diverse citizenship cases and in cases involving a federal question, as has been suggested by some, it would relieve business congestion in them and in the Supreme Court. The theory is advanced that a citizen of one state now encounters no prejudice in the trial of cases in the state courts of another state, and that the constitutional ground for the diverse citizenship of Federal Courts has ceased to operate. If the time has come to cut down the subject matter of Federal jurisdiction, it simplifies much the question of the burden of work in the federal courts, but that has not been the tendency of late years. I venture to think that there may be a strong dissent from the view that danger of local prejudice in state courts against non-residents is at an end. Litigants from the eastern part of the country who are expected to invest their capital in the West or South, will hardly concede the proposition that their interests as creditors will be as sure of impartial judicial consideration in a western or southern state court as in a Federal court. The material question is not so much whether the justice administered is actually impartial and fair as it is whether it is thought to be so by those who are considering the wisdom of investing their capital in states where that capital is needed for the promotion of enterprises and industrial and commercial progress. No single element in our governmental system has done so much to secure capital for the legitimate development of enterprises throughout the West and South as the existence of Federal courts there, with a jurisdiction to hear diverse citizenship cases. But of course the taking away of fundamental jurisdiction from the Federal Courts is within the power of Congress, and it is not for me to discuss such a legislative policy. My suggestions are intended to meet the situation as it is, and to se-

cure some method by which the litigation under existing law may be promptly and justly dispatched. The trial of criminal cases in the Federal Courts is not within the scope of this paper.

Would Abolish Dual System of Justice

An important improvement in the civil practice in the Federal Courts is one that in my judgment ought to have been made long ago. It is the abolition of two separate courts, one of equity and one of law, in the consideration of civil cases. It has been preserved in the Federal Court, doubtless out of respect for a distinction which is incorporated in the description of the judicial power granted to the Federal government in the Constitution of the United States. But many state courts have years ago abolished the distinction and properly have brought all litigation in their courts into one form of civil action. No right of a litigant to a trial by jury on any issue upon which he was entitled to the right of trial by jury at common law need be abolished by the change. This is shown by the every day practice in any state court that has a code of civil procedure. The same thing is true with reference to the many forms of equitable relief which were introduced by the Chancellor to avoid the inelasticity, the rigidity, inadequacy and injustice of common law rules and remedies. The intervention of a proceeding in equity to stay proceedings at common law and transfer the issues of a case to a hearing before the Chancellor was effective to prevent a jury trial at common law, and would not be any more so under a procedure in which the two systems of courts were abolished. Already under the Federal code, there is a statutory provision which has not yet been much considered by the courts, by which an equitable defense may be pleaded to a suit at law. If we may go so far, it is a little difficult to see why the distinction between the two courts may not be wholly abolished, and the constitutional right of trial by jury retained unaffected.

If the separation of equity and law for the purpose of administration is to be abolished in the Federal system, and they are to be worked out together in the same tribunal, then a new procedure must be adopted. Who shall do it? Shall Congress do it or merely authorize it to be done by rules of Court? Congress from the beginning of the government has committed to the Supreme Court the duty and power to make the rules in equity, the rules in admiralty, and the rules in bankruptcy. Moreover, this American Bar Association has for some years been pressing upon Congress the delegation of power to the Supreme Court to regulate by rule the procedure in suits at law. There would seem to be no reason why, where the more difficult work of uniting legal and equitable remedies in one procedure is to be done, the Supreme Court, or at least a Committee of Federal Judges, should not be authorized and directed to do it. Of course the present statutes governing a separate administration of law and equity must be amended or revised by Congress, and certain general requirements be declared, but the main task of reconciling the two forms of procedure can be best effected by rules of Court.

England Solves Historic Problem

The same problem arose in the courts of England and has been most successfully solved. By the Judicature Act of 1873, Parliament vested in one tribunal, the Supreme Court of Judicature, the administration of law and equity in every cause coming before it. By subsequent acts, the divisions of that Court were reduced to three divisions: (1) the King's Bench; (2) Equity; (3) and Probate, Divorce and Admiralty, as they now are. They are all merely parts of the same court, but for convenience the suits are brought in those divisions respectively corresponding to the remedies sought. If it happens that what would have been equitable relief is sought in the King's Bench, it may be granted there, but it is more likely to be assigned

to the Equity Division, and *vice versa*. Judges familiar with the equity practice are appointed to the Equity Division, and those familiar with the law side of the practice are sent to the King's Bench. Then there has grown up a separate branch of the High Court in which only commercial cases are heard, and to that Court judges familiar with the law merchant and commercial contracts and customs are assigned. There is the same division of the practice among the barristers under the influence of the older separation of law and equity administration, but the courts of the High Court are now all one court, with full power to give any kind of relief the nature of the case requires. Parliament gave to a commission of the judges and representatives of the Barristers and Solicitors, power to recommend rules of practice for this new system, and to the Courts to adopt them. The present procedure is the result of rules adopted in 1883, amended from time to time by the same authority as the experience with the existing rules showed the necessity. The rules and amendments are reported to Parliament for its rejection or amendment, but until that is forthcoming, they control the procedure.

It was my good fortune during three weeks of this summer to be able to attend the hearings of all the various branches of the courts of England in London.

I have heard it questioned whether, in view of the report that was given in this country as to my activities that were not exactly judicial or professional, it was possible for me to absorb any knowledge with reference to the practice in the English courts. I think Lord Shaw has lent a little support to that view by certain remarks that I have heard him make. I am not disposed to say that in an ordinary case such evidence would not be convincing. But to men who have attended the meetings of the American Bar Association, and know what a single individual of digestive experience can do in the matter of functions for a week, a great deal will seem possible in three weeks.

I may stop to say that I am deeply grateful for the reception that was given me as Chief Justice by the Bench and the Bar of England, and for the truly brotherly spirit which they manifested. Of course, one cannot separate himself from the personal in such a manifestation. He knows it is not really personal, but representative, but he thanks God that he happens to be the personal representative to receive it. They opened their arms. Everything that they could do they did. It showed to me what I have always thought to be the case, that one of the strongest bonds between this country and Britain is the bond between professional men of the law and the judges who have to do with the administration of justice in both countries.

In connection with this general subject, the treasurer of the Association, Mr. Wadhams has asked me to read a letter, which I am sure you will be glad to hear.

The Royal Courts of Justice, London, July 21, 1922.

At the suggestion of Viscount Cave, who enjoyed the hospitality of the American Bar Association the year before last, and with the approval of the Lord Chancellor, I am writing to you, tentatively, to ascertain whether I might send you a formal invitation to the American Bar Association to hold their annual meeting in 1924 in London. It will be a great honor and pleasure to the Bar of England if this could be arranged.

There are a number of matters, such as the time, the places of meeting, and facilities which would have to be considered, as well as minor details, but if you were to let me know that the invitation would be acceptable to the American Bar Association, it would be a pleasure to me to send you a formal invitation upon hearing from you.

Perhaps at the same time you would let me know the number who would be likely to come and the time during which the meetings would last. These matters, however, I leave for further consideration, and ask you to let me know as a preliminary

whether my suggestion is one that the American Bar Association would entertain.

I feel sure that there are many of the Bench and Bar here who would be glad to join in offering a welcome to your Association, and who hope, as I do, that the plan may be found possible.

Believe me.

Yours very truly,

ERNEST M. POLLOCK.

Sir Ernest Pollock is the Attorney-General of England.

With respect to that suggestion, I may say that I was in attendance at the so-called Grand Night, at Gray's Inn, in London. The Lord Chancellor was there, the President of the Probate, Divorce, and Admiralty Division, Sir Henry Dukes, Mr. Justice Darling, Sir John Simon, and a number of others. The question of such a visit was discussed. They were all strongly in favor of it. And I can assure you that if the Association deems it wise to accept this for the year 1924, those who go will never regret it or forget it. The Lord Chancellor, Viscount Birkenhead, I have been pressing to come to this country and attend the meeting of the American Bar Association next year. I am not sure how his engagements will be, but that he will be delighted to come, if he can come, I know. Certainly the American Bar Association would be delighted to receive him, not only as the highest judicial officer of Great Britain, but as a man of the greatest ability and the greatest charm, and a man that you would be glad to take into your bosom as a fellow judge and fellow member of the Bar.

Now, having proved to you that I gave sufficient attention to the practice in the Royal Courts, I am going to give you my conclusions.

I had looked into the description of the procedure which obtains in those courts as described in a very useful book prepared by Mr. Samuel Rosenbaum, of the Philadelphia Bar, entitled "The Rule-Making Authority in the English Supreme Court," and I was permitted to be present and note the practical operation of the rules. The history of their adoption is set out in great detail by Mr. Rosenbaum, and I shall not detain you with an attempt at even a *resume* of the growth of the system and the remarkable character of the reform which was effected through the rules in the administration of English justice. Nor am I competent to do so with accuracy of detail. I can only essay a most general description.

If one will read the contrast between the dreadful inadequacy of English Courts and the administration of English justice in 1837, when Victoria ascended the throne, and their efficiency and admirable work in 1887, when she celebrated her golden jubilee, as described by Lord Bowen, one of the great English Judges, in his Jubilee essay on the Administration of Law, he may well take courage as to what may be done with our system in the way of bettering it. Describing the result of the change of procedure by Rules of Court, Lord Bowen used these words:

"A complete body of rules—which possess the great merit of elasticity, and which (subject to the vote of Parliament) is altered from time to time by the judges to meet defects as they appear—governs the procedure of the Supreme Court and all its branches. In every cause, whatever its character, every possible relief can be given with or without pleadings, with or without a formal trial, with or without discovery of documents and interrogatories, as the nature of the case prescribes—upon oral evidence or affidavits, as is most convenient. Every amendment can be made at all times and all stages in any record, pleading, or proceeding, that is requisite for the purpose of deciding the real matter in controversy. It may be asserted without fear of contradiction that it is not possible in the year 1887 for an honest litigant in Her Majesty's Supreme Court to be defeated by any mere technicality, and slip, any mistaken step in his litigation. The expenses of the law are still too heavy, and have not diminished *pari passu* with other abuses. But law has ceased to be a scientific game that may be won or lost by playing some particular move."

The justness of this summary is thus upheld by that great jurist, Mr. Dicey:

"Any critic who dispassionately weighs these sentences, notes their full meaning, and remembers that they are even more true in 1905 than in 1887, will particularly understand the immensity of the achievement performed by Bentham and his school in the amendment of procedure—that is, in giving reality to the legal rights of individuals."

The Judges Made Responsible

The means by which this reform was accomplished and the avowed object of the framers of the rules was to effect "a change in procedure which would enable the Court, at an early stage of the litigation, to obtain control over the suit and exercise a close supervision over the proceedings in the action." Thus could dilatory steps be eliminated, unnecessary discovery prevented, needed discovery promptly had, and the decks quickly cleared for the real nub of the case to be tried. It was first proposed to discard pleadings, but this was abandoned. Suit is begun by service of a writ of summons. Shortly after the appearance of the defendant, a summons for direction is issued to him, at the instance of the plaintiff, requiring him to appear before a Master or Judge to settle the future proceedings in the cause. In the King's Bench this work is done by Masters. In equity and commercial cases it is usually done by the Judge to whom the case is assigned. The Master or Judge makes an order as to the manner in which the cases shall be carried on and tried. In cases in which the original writ is endorsed with notice that the claim is for a fixed sum as upon a contract, a sale of goods, a note or otherwise, and the plaintiff files an affidavit that there is no defense, the Master may require the defendant to file an affidavit showing that he has a good defense and specifying it, before he may file an answer. If he files no such affidavit, summary judgment goes against him. In other cases, the Master or Judge makes an order, fixing time for pleadings and kind of trial, and no step is thereafter taken without application to the Master or Judge, so that the latter supervises all discovery sought, decides what is proper, and requires the parties to lay their cards face up upon the table and the real issue of fact and law is promptly made ready for the trial.

I sat with Sir T. Wills Chitty, the learned and most effective Head Master of the King's Bench, and saw the solicitors come in, sometimes barristers come before him to shape up the issues, the pleadings and the directions for trial. He knocked the heads of the parties together so that a clear issue between them was quickly reached.

Demurrers are abolished. An objection in point of law may be made either at or after the trial of the facts. Discovery may be had by a mere letter of inquiry from the solicitor of one party to the other, and any refusal is at once submitted to the Master or Judge. Should either party object to the orders of a Master, the question can be at once referred to the Judge who is to try the case and passed on. The pleadings are very simple. They are a statement of claim and an answer. Great freedom is allowed as to joinder of actions and parties and in respect of setoffs and counterclaims. The pleadings are prepared on printed forms prepared for use according to the rules, with details written into the paragraphs. The nature of the claim is stated in a very brief way. A blank paragraph is left in the form for particulars as to the main facts and for reference to documents relied on, copies of which are appended to the pleading. The main facts and the documents upon which each side relies to establish its case or defense are thus brought out by discovery, and all in a very short time. Admissions of important facts are elicited by each side from the other to save formal proof and its expense, on penalty of costs for refusal if the fact proves to be uncontested.

English Procedure Expeditious

The effect of the administration of justice under these rules can be shown in some degree by reference to the judicial statistics of England and Wales for 1919 in the disposition of cases in the High Court of Justice, King's Bench Division. The summonses issued in the King's Bench Division in a year amounted to 43,140. In 14,244 cases, judgments were entered for the plaintiff. In 386 cases, judgments were entered for the defendant. In 526 cases other judgments were entered than either for the plaintiff or the defendant, making a total of 15,136 judgments entered in the suits brought. This would leave undisposed of about 28,000 writs of summons issued This sum represents the suits brought which were abandoned or which resulted in satisfaction of the claim without further proceeding beyond the issuing of the summons. Of the judgments rendered, over 9,000 were entered in default of appearance of the defendant; 756 by default other than in default of appearance. 2,684 judgments were entered as summary judgments under Order 14, because the defendant would not make the necessary affidavit to justify his securing leave to answer. One hundred and forty-one judgments were rendered after trial with a jury. Eight hundred and thirty-six judgments were rendered after trial without a jury. Thirty-five were rendered on the report of the official referee. Of the judgments for defendants, 55 were rendered after trial with a jury, and 309 after trial without a jury. This shows how thoroughly the preliminary steps to the preparing of the issue winnows out the cases and disposes of them without further clogging of the docket.

The speed with which this system disposes of the business was testified to by the New York State Laws Delays Commission twenty years ago. It reported to the Governor in 1903 that 23 judges of the High Court of Judicature in England actually tried twice the number of cases in a year that 41 judges in New York City tried in the same time, and that the difference was due to the operation of summons for directions and the summons for summary judgment. The Report was approved by the Association of the Bar of the City of New York, Judge Dillon then being Chairman of the Judiciary Committee of that body. It was sought to introduce this reform for New York City by act of the Legislature providing for fifteen Masters, but it is said to have been beaten by the influence of those who did not wish to abolish the referee patronage in the New York Courts.

The English system is adapted to the conditions prevailing in that country and has been built up on the traditions of the Bench and Bar, which do not have the same force here. Moreover, it is much more applicable to the disposition of the litigation of a great city like New York, Chicago or Philadelphia, as the New York Commission found it to be, than to our Federal Courts of first instance. In the first place, the territorial jurisdiction in England is a compact one, embracing only England and Wales. and in which there are 500 county courts, disposing, under the simplest procedure, of much of the business involving less than £300.[3] The branches of the High Court of Judicature to which these rules of procedure apply are centered in London, the judges live there, and while the assizes are held at various towns in England and in Wales, access to London is easy, and the natural result is that the important cases are generally either brought in London or ultimately reach there for their disposition. The division of the profession into barristers and solicitors, and the small number of the active members of the Bar, as compared with our own, make it easy to form an atmosphere of accommodation on the part of the counsel toward the court and toward one another, which could hardly exist in the administration of justice in a Federal court covering all or half a state, and involving litigation

(3) There are fifty-seven County Court Judges in England and Wales.

in which the counsel who appear are engaged in that court in only a small part of their practice. The English barristers only know their clients through the briefs of the case which are handed them on which to conduct the case in Court. Their fees are fixed in advance and are not contingent. They present the case in an impersonal way and are not tempted to use any other than proper means for the protection of their clients' interests. This renders much less common efforts at delay and the use of legal procedure to prevent the prompt rendition of justice. More than this, the system of costs in the English courts in which the defeated party is made to pay the expenses of the other side, including solicitors' and barristers' compensation, restrains counsel by the fear of penalties always imposed for useless proceedings.

Don't misunderstand me, that the costs would include a fee of 500 guineas. That is only when you employ one who has climbed to the top of the profession, and if you wish to afford that luxury, you will have to pay for that yourself whether you win or lose.

We could never adopt here the division of the Bar into solicitors and barristers or the English system of costs. But these differences should not prevent our using a great deal of what has proved effective in the English practice to simplify procedure and speed justice in our Federal Courts. The English precedent certainly demonstrates the advantage of having the procedure by Rules of Court, framed by those most familiar with the actual practice and its operation and most acute to eliminate its abuses and defects.

Permanent Commission on Court Proposed

What I would suggest is that Congress provide for a commission, to be appointed by the President, of two Supreme Court Justices, two Circuit Judges, two District Judges, and three lawyers of prominence from a list recommended by the American Bar Association, to prepare and recommend to Congress amendments to the present statutes of practice and the judicial code, authorizing a unit administration of law and equity in one form of civil action. The Act should provide for a permanent commission similarly created, with power to prepare a system of rules of procedure for adoption by the Supreme Court.[4] Power to amend from time to time should also be given. The rules and their amendments. after approval by the Court. should be submitted to Congress for its action, but should become effective in six months, if Congress takes no action. In this way the procedure would be framed by those most familiar with it and by those whose duty it is to enforce it. The advantage of experiment in the laboratory of the Court would furnish valuable suggestions for bettering the system. The important feature of such a system is that needed action by the Commission and the Court will be promptly taken and the necessary delay in a Congress crowded with business may be avoided.

The reforms that I have been advocating involve some increases in the power of the judges of the Courts, either in the matter of the assignment of judges, in the matter of the enlargement of the certiorari power, or in the adoption of more comprehensive rules of procedure. I am well aware that they will be opposed solely on this ground, and that the objection is likely to win support because of this. It is said that judges are prone to amplify their powers,—that this is human nature, and therefore the conclusion is that their powers ought not to be amplified, however much good this may accomplish in the end. The answer to this is that if the power is abused, it is completely within the discretion—indeed within the duty—of the Legislature to take it away or modify it.

Dependence upon action of Congress to effect reform to remove delays and to bring about speed in the administration of justice has not brought the best results. and

(4) See resolution of American Bar Association, giving effect to this recommendation, following this address.

some different mode should be tried. The failures of justice in this country, especially in the state courts, have been more largely due to the withholding of power from judges over proceedings before them than to any other cause; and yet judges have to bear the brunt of the criticism which is so general as to the results of present court action. The judges should be given the power commensurate with their responsibility. Their capacity to reform matters should be tried to see whether better results may not be attained. Federal judges doubtless have their faults, but they are not chiefly responsible for the present defects in the administration of justice in the Federal Courts. Let Congress give them an opportunity to show what can be done by vesting in them sufficient discretion for the purpose.

NOTE.—At the conclusion of the address the following resolution was read with the statement that it had received the unanimous approval of the Executive Committee; it was then unanimously voted by the members present:

WHEREAS, One of the gravest duties confronting the judges and lawyers of America is an administration of justice that will command the respect and veneration of the people:

RESOLVED,—First; that Congress be and it is hereby respectfully petitioned to provide by suitable statutory law for the creation of a Commission, the personnel of which shall be appointed by the President and to be composed of two Justices of the Supreme Court, two Circuit Judges, two District Judges and three members of the Bar of high standing and qualified by learning and experience.

Such Commission shall prepare and recommend to Congress amendments to the present statutes and the Judicial Code, authorizing a unit administration of law and equity in one form of civil action.

Second: That such act shall provide for a permanent Commission, created in similar manner, with power to prepare a system of rules of procedure for adoption by the Supreme Court, with power to amend from time to time.

Such rules and their amendments, after approval by the Supreme Court, shall be submitted to Congress for its action and shall become effective in six months after such submission, if Congress shall take no action thereon.

AUTOMOBILES—REGISTRATION

HARLOW v. SINMAN.

135 N. E. 553.

Supreme Judicial Court of Massachusetts.
(June 7, 1922.)

Under G. L. c. 90, § 2, requiring the registration of motor vehicles in the name of the owner, registration in the name of one part owner constituted a valid registration under which the car could lawfully be used on the highways, and protected her rights, so long as she operated or was in control of the car, though the person driving it for her was the other part owner.

James T. McCarthy and Thomas C. O'Brien, both of Boston, for plaintiff.

Sawyer, Hardy, Stone & Morrison, of Boston, for defendant.

DE COURCY, J. [1] On the morning of August 20, 1919, the plaintiff, her daughter, Grace H. Gifford, and a neighbor, were returning from Plymouth in an automobile. They were proceeding northerly along Morton street, in Boston, on their right-hand side of the road. A Ford touring car, owned and operated by the defendant, was being towed by a Ford truck in the opposite direction; it suddenly darted out from behind the truck, "shot across" Morton street, struck the left side of the Harlow car, and tipped it over. The due care of the plaintiff is not questioned. The negligence of the defendant plainly was for the jury, as the evidence tended to show that the brakes and steering gear of his machine were in good condition. It is apparent that the verdict for the defendant was directed on the issue of lawful registration.

[2] The automobile was registered in the name of the plaintiff, and the "usual registration papers" were in the car at the time of the accident. Both she and her daughter, Mrs. Gifford, were duly licensed operators, and each frequently drove the car. At the time of the accident Mrs. Gifford was at the wheel, and the plaintiff sat beside her on the front seat. There was some evidence that the plaintiff was the sole owner of the car, and that her daughter was driving it for her. That was sufficient to entitle her to go to the jury. Commonwealth v. Sherman, 191 Mass. 439, 78 N. E. 98; Bourne v. Whitman, 209 Mass. 155, 172, 95 N. E. 404,

35 L. R. A. (N. S.) 701; Smith v. Jordan, 211 Mass. 269, 97 N. E. 761; Bullard v Boston Elevated Railway, 226 Mass. 262, 115 N. E. 294.

[3] Even if Mrs. Gifford was a part owner of the automobile, as the evidence indicates, that fact would not render the registration invalid as matter of law. The statute, G. L. c. 90, § 2, provides that application for the registration of motor vehicles may be made by the "owner thereof." As was said in Keith v. Maguire, 170 Mass. 210, 212, 48 N. E. 1090:

"the word 'owner' is not a technical term. It is not confined to the person who has the absolute right in a chattel, but also applies to the person who has the possession and control of it."

In Downey v. Bay State Street Railway, 225 Mass. 281, 284, 114 N. E. 207, 208, the plaintiff's interest in the truck which was damaged by the defendant was that of purchaser under a conditional contract; by the terms of which a bill of sale was not to be given until the purchase price was fully paid. Registration in such purchaser's name was held to be valid. The Court said:

"The word 'owner' includes, not only persons in whom the legal title is vested, but bailees, mortgagees in possession and vendees under conditional contracts of sale who have acquired a special property which confers ownership as between them and the general public for the purposes of registration."

This view was followed in the similar case of Hurnanen v. Nicksa, 228 Mass. 346, 117 N. E. 325. In Temple v. Middlesex & Boston Street Railway, 241 Mass.——, 134 N. E. 641, the automobile was held to be legally registered in the name of the vendor in a conditional sale agreement; and the purchaser, who had an operator's license, was allowed to recover for personal injuries and damages to property caused by the defendant's negligence. In the case at bar the plaintiff was an absolute, legal owner, even though she was not the only person having an interest in the automobile. Registration in her name constituted a valid registration, under which the car could lawfully be used upon the public ways; and it protected the plaintiff's rights, at least so long as she operated or was in control of the car. She could employ any person to operate the car for her. The fact that the agent thus employed happens to be a part owner would not deprive the plaintiff, in actual control of the car, of her rights as a duly licensed and registered owner. Smith v. Jordan, 211 Mass. 269, 271, 272, 97 N. E. 761. The case of Shufelt v. McCartin, 235 Mass. 122, 126 N. E. 362, does not control the present one. In that case the automobile was operated by a nonregistered part owner, on his own account, and in the absence of the part owner in whose name the car was registered. In Rolli v. Converse, 227 Mass. 162, 116 N. E. 507, referred to in the Shufelt Case, there had been a transfer of ownership of the vehicle subsequent to the original valid registration; and by the express terms of the statute "upon the transfer of ownership of any motor vehicle its registration shall expire," the registration had come to an end. While, as suggested in these cases, a purpose of the Legislature in requiring registration in the name of the owner, was to provide identification for the benefit of travelers injured on the highway, this was not the sole purpose. That is apparent from the cases above referred to, where the machine was properly registered in the name of the owner and legally operated by one with only a special property therein, or vice versa. And cases often arise where the automobile is operated by one to whom it is lent by the registered owner. O'Rourke v. A. G. Co., Inc., 232 Mass. 129, 122 N. E. 193. See Temple v. Boston & Middlesex Street Railway, supra. In Crompton v. Williams, 216 Mass 184, 103 N. E. 298, the automobile was owned by Charles Crompton, and registered in the name of Charles Crompton & Sons. At the time of the accident it was in the use and possession of a corporation, Charles Crompton & Sons, Inc. It was held that the requirements of the automobile registration statute were satisfied.

The plaintiff was entitled to go to the jury on the evidence, and the entry must be:

Exceptions sustained.

NOTE—Construction of Provision Requiring Automobiles to be Registered by "Owner."—A requirement that the "owner or custodian" of any automobile register the same has reference to persons having an independent and permanent interest in the machine, and does not include a servant, or person having only temporary control. Armstrong v. Sellers, 182 Ala. 582, 62 So. 28.

The word "owner" includes a person having a special interest in the automobile. Brown v. New Haven Taxicab Company, 92 Conn. 252, 102 Atl. 573.

The word includes a person having possession of an automobile under an agreement to purchase the same by installment payments, the title to remain in the seller until the car is paid for in full. Hurnanen v. Nicksa, 228 Mass. 346, 117 N. E. 325; Downey v. Bay State Street R. Co., 225 Mass. 281, 114 N. E. 207.

In Temple v. Middlesex & D. Street R. Co., Mass., 134 N. E. 641, it is held that either the seller or the buyer under contract retaining title in the seller until the machine is fully paid for, may register the same in his name, and that there is no necessity for it being registered in the names of both.

It is held in Shufelt v. McCartin, Mass., 126 N. E. 362, that the registration of an automobile in the name of two joint owners does not permit the lawful operation of such machine on the public highway by the other joint owner.

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Adverse Possession**—Wrongful Entry.—Adverse possession under color of title, within the five-year statute of limitations, is not interrupted by a wrongful entry upon such possession during the five-year period, where the ousted possessor within a reasonable time instituted forcible entry and detainer proceedings, as a result of which he regained possession of the property.—Duncan v. Gragg, Tex., 242 S. W. 491.

2. **Animals**—Intent.—Under a city charter, making one who permits animals or fowls to run at large guilty of a misdemeanor, guilty intention or willful neglect in leaving a gate of chicken pen open must be shown.—City of Union v. Lindemann, Mo., 242 S. W. 416.

3. **Automobiles**—Contributory Negligence.—In an action for personal injuries resulting to plaintiff from being struck by defendant's automobile, held, that it was not contributory negligence as a matter of law for plaintiff to stand in the gutter awaiting the passing by of vehicles.—Hershkowitz v. Moton Realty Co., N. Y., 194 N. Y. Supp. 806.

4.——Contributory Negligence.—An automobile driver, who crossed three parallel tracks and was then struck by a train which he could have seen in time had he looked, and which he would also have heard had he stopped the noise of his engine, held guilty of contributory negligence.—Louisville & N. R. Co. v. Cloud, Ala., 92 So. 550.

5.——Gifts.—In trover against a widow for an automobile alleged to belong to her deceased husband, under Pub. Laws 1911, c. 707, where there was evidence that he had never owned it but had paid for it as a present for her, held, that there was no necessity of a special delivery by him to her to perfect the gift.—Arnold v. Barrington, R. I., 117 Atl. 424.

6.——Insurance.—An insurer of an automobile is not estopped to interpose as a defense to an action on the policy a false statement that the automobile was not mortgaged, which statement was made out by an agent, where assured knew of the false statement, or could have known of it by reading the policy.—Eagle, Star & British Dominions Ins. Co. v. Main, Md., 117 Atl. 571.

7.——Mitigation of Damages.—Under Code 1919, § 3959, where plaintiff's auto was damaged by defendant's train at a public highway crossing, the failure of defendant's agents to give the statutory signals required on approaching crossings entitles plaintiff to recover, though plaintiff was guilty of contributory negligence; such contributory negligence to be considered only in mitigation of damages.—Chesapeake & O. Ry. Co. v. Gayle, Va., 112 S. E. 785.

8.——Negligence.—A pedestrian may move about in a street car safety zone regardless of his intention to board a car, without being guilty of contributory negligence, since he may assume that no automobile will be driven into the safety zone.—Jaroscz v. Geisler, Mich., 189 N. W. 12.

9.——Ownership.—Proof of ownership, without more, of an automobile which was being driven upon a public highway, raises a presumption of fact that the automobile was in the possession of the owner, if not personally, then through his servant, the driver.—Mehan v. Walker, N. J., 117 Atl. 609.

10.——Unauthorized Use.—Where owner loaned his automobile, and it was not returned within the time stipulated, he is not, under Comp. Laws 1915, § 4825, fixing responsibility for negligent operation of motor vehicles driven by the express or implied consent of the owner, responsible during the unauthorized period of use merely because he failed to ascertain the reason for delay in return.—Union Trust Co. v. American Commercial Car Co., Mich., 189 N. W. 23.

11. **Bankruptcy**—Fraud.—Under Bankruptcy Act, §§ 12, 14 (U. S. Comp. St. §§ 9596, 9598), relative to compositions and discharges, where a creditor participated in composition proceedings, and opposed the granting of a discharge on the ground that loans had been obtained by fraud, the confirmation of the composition was not res judicata in an action for deceit based on the same ground.—International Trust Co. v. Myers, Mass., 135 N. E. 697.

12.——Jurisdiction.—Where a bankruptcy court sitting in Washington has taken possession of property of the bankrupt located in Alaska, a creditor, who petitions for delivery of the property to him under a conditional sale contract, is not to be regarded as seeking to enforce its remedy in the courts of Washington, within the rule that a party so seeking is governed by the law enforced by those courts, since the creditor did not come into that court voluntarily, but because it was the only forum where relief could have been obtained."—In Re Hood Bay Packing Co., Wash., 280 Fed. 866.

13.——Partners.—A petition praying that a partnership, but not its members, be adjudged a bankrupt because of the insolvency of the firm, which does not allege either that the members of the partnership are insolvent or that firm assets, combined with the assets of the members in excess of their individual debts, are insufficient to pay the partnership debts, must be dismissed.—In re Griffith, Del., 280 Fed. 878.

14. **Banks and Banking**—Accounting.—In a suit by administrator of an estate against a bank for an accounting, where money belonging to an estate was deposited by a person in his own name as trustee for the heirs, and the person who deposited the money made many deposits and withdrawals from the account, of which the cestuis could prove only the first deposit belonged to them, they could not recover from the bank an amount exceeding such item.—Sparrow v. Vermont Savings Bank, Vt., 117 Atl. 667.

15.——Clearance List.—It is a legitimate feature of the federal reserve bank to publish a par clearance list; that is, a list of banks on which checks are drawn that will be collected at par by the federal reserve banks. But such list should not include the name of any nonmember bank without its consent, since a conclusion may be drawn from the appearance of a bank's name on the par list that it agrees to remit at par.—American Bank & Trust Co. v. Federal Reserve Bank, Ga., 280 Fed. 940.

16.——Constitutional.—The amendment to section 3, article XIII, of the Ohio Constitution, adopted September 3, 1912, as applied to stockholders of corporations organized after the constitutional amendment of 1903, and prior to January 1, 1913, and as applied to stockholders to whom stock was issued during the same period, does not violate the provisions of section 10, article 1, of the federal Constitution, which provides that no state shall pass any law impairing the obligation of contracts.—Allen v. Scott, Ohio, 135 N. E. 683.

17.—Funds.—The president of a national bank may be guilty of willful misapplication of the funds of such bank, in violation of Rev. St. § 5209 (Comp. St. § 9772), though he has not the actual possession, if he has such control and power of management as to direct an application of the funds in such manner, and under such circumstances as to constitute a violation of the statute.—United States v. Reece, Idaho. 280 Fed. 913.

18.——Warranties.—A bank, which organized a subsidiary corporation to handle property it owned, which corporation had no capital or property, except that supplied by the bank, held liable for damages sustained by a purchaser of property from the corporation, which paid the bank for the same, where the property was not as represented and warranted.—Portsmouth C. Oil Refining Corp. v. Fourth Nat. Bank, Ala., 280 Fed. 879.

19. **Bills and Notes**—Delivery.—Where the owner of land and notes put the notes and deeds to the land in the safe of his lawyer without giving information or instructions concerning them and did not part with the possession and control of them, there was no valid delivery.—City Nat. Bank v. Morrissey, Conn., 117 Atl. 493.

20.——Limit Authority.—Where before the execution of a note the words "payable to John Eggimann estate" were written on its face, these words must be construed as part of the contract, and limit payee's authority over the note.—Farmers' & Merchants' Bank v. Siemers, Mo., 242 S. W. 417.

21.——Renewal.—Where drawers agreed to extend the date of payment by renewing trade acceptances, if acceptor found it impossible to make payment, acceptor was not entitled to more than one renewal. —Oetjen v. Robinson-Roders Co., N. J., 117 Atl. 629.

22. **Brokers**—Commission.—Where the owner of realty promised, if his tenant did not want the property, to name a price at which he would sell to an unknown customer of one who offered to act as broker, and to pay him a commission if a sale was made, and in consideration of such promise the latter thereupon named the prospective purchaser who later bought the property which the tenant did not want, he was entitled to recover a commission without proof that he was the procuring cause of the sale.—Broderick v. Hart, Conn., 117 Atl. 491.

23. **Carriers of Passengers**—Commissioned Police. —A railway policeman commissioned by the Governor under Comp. St. Supp. 1911-15, p. 113, being a state officer charged with public duties and responsible to the state, not the railway company by whom he is employed, unless his action is instigated by the company or its officers or employees, the railway company is not liable as for an assault for his act done in pursuance of his duty to preserve order.—Goldberg v. Central R. Co., N. J., 117 Atl. 479.

24.——Contributory Negligence.—Where it appeared that plaintiff suing for personal injuries was standing on a platform of an electric railway station not intended for the use or accommodation of the public, which was warned against its use at this place by signs, and that when about to take a child through a rear window from a woman there with him to meet an incoming passenger, he was struck by the rear door of one of defendant's passing cars, proceeding around the station very close to the wall, held that he was guilty of contributory negligence, though he testified no alarm signals were given, and he did not know the car was passing until he was struck.—Meanley v. Petersburg, H. & C. P. Ry. Co., Va., 112 S. E. 800.

25.——Utility Commission.—Under Pub. Acts 1921, c. 77, § 3, providing that no person, etc., shall operate a jitney until the owner shall obtain a certificate from the Public Utilities Commission specifying the route over which the jitney may operate, the Commission may select one person or company and grant it alone a certificate, so as to create what is in effect a monopoly.—Modeste v. Connecticut Co. et al., Conn., 117 Atl. 494.

26. **Chattel Mortgages**—Priority.—A garage keeper's lien, under Pub. Acts 1915, No. 312, § 1, does not take precedence over a prior chattel mortgage. —Sloat v. Mid-West Finance Corporation, Mich., 189 N. W. 52.

27. **Constitutional Law**—Class Legislation.—Vernon's Sayles' Ann. Civ. St. 1914, § 5695, attempts to divide the holders of barred obligations executed subsequent to July 14, 1905, into two classes, relating to the time when their claims were barred, and denies to citizens of the state similarly situated the equal protection of the law.—Cathey v. Weaver, Tex., 242 S. W. 447.

28.——Class Legislation.—The legislative act requiring the board of regents of the University of Nebraska to establish and operate a plant for the manufacture of hog-cholera serum and to distribute the product to farmers and swine-growers at the actual cost of production is not void as class or special legislation inhibited by the state or federal Constitution, Laws 1911; c. 139.—Fisher v. Board of Regents of University of Nebraska, Neb., 189 N. W. 161.

29.——Contracts.—Street railroad's obligation to carry passengers for a certain fare from a village to a certain point outside the village under its franchise with the village was not affected by a city's annexation of such territory, since the city took the territory subject to all valid contractual rights then in existence, which contractual rights were protected by Const. art. 2, § 28, and Const. U. S. art. 1, § 10, relating to impairment of the obligation of contracts. (Per Johnson and Hough, JJ.)—Village of Wyoming v. Ohio Traction Co., Ohio, 135 N. E. 675.

30. **Contracts** — Consideration. — The implied promise by a company to pay an amount expended by an agency in preparing an advertising plan, the company having given the plan no consideration, was a consideration for the subsequent express promise to compensate the agency for expenses incurred.—Haynes Chemical Corporation v. Staples & Staples, Va., 112 S. E. 802.

31.——Reasonable.—In a contract not to engage in a competing business the restraint must be reasonable. The test to be applied in deciding whether the restraint is reasonable or not is to consider whether it is only such as is necessary to afford a fair protection to the interest of the party in whose favor it is given, and not so large as to interfere with the interests of the public.—Scherman v. Stern, N. J., 117 Atl. 631.

32.——Time.—At law, a time stipulated in a contract for its performance is of its essence, unless a contrary intent appears from the face of the contract, or unless there is evidence of a waiver of the time fixed for its performance by the party seeking rescission of the contract.—Pietsch v. Stirling Home Builders, N. J., 117 Atl. 475.

33 **Corporations**—Authority.—In the absence of evidence restricting his authority in the particular instance, the president and acting manager of a business corporation, who has customarily acted for it in the purchase of goods, is authorized to contract in its name for merchandise of the kind used in its business.—Houghton & Dutton Co. v. Journal Engraving Co., Mass., 135 N. E. 688.

34.——Authority.—Corporations controlled and managed by the same officers and stockholders have a right to deal with each other, and the directors are presumed to act honestly and according to their best judgment for the interest of all.—Atlantic Refining Co. v. Port Lobos Petroleum Corp., Del., 280 Fed. 934.

35.——Officers.—It is settled that, when a suitor is entitled to relief in respect to the matter concerning which he sues, his motives are immaterial; and where a corporation sues the motives of its officers in bringing the suit cannot be imputed to it, especially as their motives would not operate to defeat the suit if it were theirs individually.—Board of Com'rs v. Maretti, N. J., 117 Atl. 483.

36.——Pledge.—Where a corporation mortgage provided that certain percentage of the principal of the bonds issued thereunder and outstanding should be paid annually to the trustee as a sinking fund to redeem the bonds secured, the sinking fund payments were not due on bonds executed and certified, part of which were retained by the corporation unincumbered, in its treasury, and part of which were held by the trustee as custodian for it, since the bonds were not "issued and outstanding" while retained by the mortgagor or its depositary, but the payments were due on bonds which had been pledged.—Bankers' Trust Co. v. Denver Tramway Co., N. Y., 135 N. E. 936.

37.——Right to Quit.—A public service corporation has the right, if it finds its business unremunerative, unless bound to the contrary by a contract, to cease operating and stop its work.—Southern Bell Tel. & Tel. Co. v. Railroad Commission, S. C., 280 Fed. 901.

38.——Sale of Stock.—Where the directors of defendant corporation were authorized to sell stock by a resolution of the board, and the general manager, who had full power and authority over the selling of stock, consulted with and urged the directors to sell stock to raise funds, and there were several sales without action by the board of directors as such, the general manager had no power to repudiate the sale of stock or to condition such sales upon his acceptance or approval.—Toles et al. v. Duplex Power Car Co., Mich., 189 N. W. 46.

39. **Covenants** — Restrictions. — Restrictions in deeds to lots in a certain territory prohibiting business houses, saloons, public schools (flats, or public places of any kind that may be considered a nuisance in a private residence street prohibits the erection of any business house in the district, and is not limited to such business houses as may be considered a nuisance.—Harvey v. Rubin, Mich., 189 N. W. 17.

40. **Damages**—Contract.—Where a contract for the sale of a saloon provided for the payment of $100 down and $400 when the license was transferred, and, in case the buyer failed to perform, the money paid on the purchase price should be retained as liquidated damages, the seller was not entitled to the $400 for the buyer's failure to sign a bond and produce his sureties for approval as required by Gen. Laws 1909, c. 123, § 2, after the board of police commissioners had voted the transfer.—Grande v. Eagle Brewing Co., R. I., 117 Atl. 640.

41. **Deeds**—Delivery.—Acknowledgment of deed and its possession by the grantee makes out a prima facie case of delivery, which can be overcome by evidence that no delivery was intended and none made.—In Re Cragin's Estate, Pa., 117 Atl. 445.

42. **Easements**—Consideration.—A contract not to build wall or other obstruction closer than four feet to the boundary line of certain lots, or over or above an open space of eight feet which by a prior verbal agreement with an adjoining landowner was to be left between their respective buildings, or in any manner to obstruct or darken such space except as expressly provided, in consideration of the adjoining landowner having theretofore constructed its building four feet from the line in conformity to its verbal agreement, and its promise to keep such space open and unobstructed in the future, was supported by ample consideration.—Settegast v. Settegast Realty Co., Tex., 242 S. W. 485.

43. **Electricity**—Negligence.—A finding by the jury, in response to a special issue that the fire in plaintiff's building was caused by an overload of electricity entering the building does not create a presumption of negligence on the part of an electric light company in permitting the overload to enter the building.—Cecil & Co. v. Stamford Gas & Electric Co., Tex., 242 S. W. 536.

44. **Frauds, Statute of**—Employer.—The promise of an employer to a physician and surgeon after an employee, injured in his employment, was operated on, to pay for the operation and care of the employee at a hospital, was within the statute, being a promise to pay the debt of the employee.—Moore v. Derees, N. J., 117 Atl. 480.

45.——Evidence.—In a proceeding for alimony pending a suit for separation, examination of the wife as to the reality of a sale of property by her to her sister, for the purpose of ascertaining whether she really owned the income therefrom, was improperly excluded.—Abrams v. Rosenthal, La., 92 So. 567.

46. **Highways**—Telephone Pole.—A telephone pole located from 11 to 12 inches outside of a traveled track of a highway on an elevation of from 6 to 8 inches above the traveled track and over 4 feet from the nearest limits of the highway may be found to interfere with the use of the highway, even though the traveled portion of the highway at that point was about 14 feet wide.—Druska v. Western Wisconsin Telephone Co., Wis., 189 N. W. 152.

47. **Insurance**—Beneficiary.—When the beneficiary in a life insurance policy is pointed out by name, and the word "wife" is added as an appositive, the party named is entitled as beneficiary even if not in fact the wife of assured, and although he was married to another woman. The word "wife" held a mere descriptio personae.—Doney v. Equitable Life Assur. Soc. of the United States, N. J., 117 Atl. 618.

48.——Cancellation.—Where plaintiff's husband took out a life insurance policy, payable to plaintiff as beneficiary, reserving the right to change the beneficiary, although the insured and insurer could not, so long as plaintiff remained the beneficiary, agree to a surrender and cancellation of the policy, yet insured had the right to revoke the designation of plaintiff as beneficiary and designate his estate as beneficiary, and then, having control of his estate, to receive a return of the premiums paid and surrender the policy for cancellation, notwithstanding the facts that plaintiff had paid the premiums and insured made the change just before death and was unable to surrender the policy for indorsement, and that the insurance company apparently desired the surrender and cancellation, and to that end prepared most of the papers signed by insured at its home office.—Quist v. Western & Southern Life Ins. Co., Mich., 189 N. W. 49.

49.——Value.—Combination life, accident, or health policy issued under Rev. St. 1911, art. 4762, provided that on insured's death from illness the insurer would pay "in lieu of all other indemnity a sum equal to 15 times the weekly benefit provided in schedule below, but not exceeding $150. In another clause it specified the indemnity for death or disability from accident as the "principal sum." In the schedule referred to the weekly benefit was shown as $5 and the "principal sum" as $150. Held, that the provision for payment of a sum equal to 15 times the weekly benefit, or $75, was not invalidated by section 4742, subd. 3, prohibiting a provision for any mode of settlement at maturity of less value than the "amounts insured on the face of the policy"; the "amounts insured on the face of the policy" being both the $75 for death from illness and $150 for accidental death or disability.—First Texas Prudential Ins. Co. v. Smallwood, Tex., 242 S. W. 498.

50. **Intoxicating Liquors**—Repealed.—Under Gen Law 1909, c. 123, § 60, providing that money paid for intoxicating liquor sold in violation of law shall be considered, as between the immediate parties, to have been received without consideration, plaintiff could recover money paid to defendant for liquor where defendant knew that plaintiff was an unlicensed dealer, and that the liquor was to be resold, though Gen. Laws 1909, c. 123, was repealed by the Volstead Act and by Gen. Laws 1922, c. 2231, where the money was paid before these laws were passed.—Grande v. Eagle Brewing Co., R. I., 117 Atl. 640.

51.—Transportation.——Rev. St. § 3005 (Comp. St. § 5690), permitting transportation across the United States in bond of merchandise arriving from outside the United States and destined for a foreign country, was repealed, in so far as it permitted the transportation of intoxicating liquors intended for beverage purposes, by Const. Amend. 18, and National Prohibition Act, tit. 2, § 3, prohibiting the transportation of intoxicating liquors for beverage purposes, and title 2, § 35, repealing laws inconsistent with the provisions of that act.—Anchor Line v. Aldridge, N. Y., 280 Fed. 870.

52.——Vehicle.—A domestic animal, unattached to a vehicle or a conveyance, is not a "vehicle of transportation" or a "conveyance," under Act Jan. 25, 1919, § 13 (Gen. Acts 1919, p. 13), and subject to condemnation and confiscation because used to transport prohibited liquors on the animal's back.—State ex rel. Almon v. One Black Horse Mule (Dobson, Claimant), Ala., 92 So. 548.

53. **Landlord and Tenant**—Covenant.—Renewal of a lease under an option "on the same terms and conditions" held not to also renew and keep alive an option to the lessee to buy "during any time during the term and existence of lease"; the option not being an essential covenant of the lease, nor a term or condition of the demise, but merely "an accidental covenant."—Masset v. Ruh, N. Y., 194 N. Y. Supp. 701.

54.——Lease—Where lease did not give lessee the option to renew, though the original agreement between the parties contemplated such an option, the moral obligation on the part of the lessor would support as a sufficient consideration a written option given the lessee several days after the execution of the lease.—Curry v. Bacharach Quality Shops, Pa., 117 Atl. 435.

55.——Lease.—Where a tenant in possession of land under a lease for a term of years which provided for a rental during the term, to be paid in equal monthly sums in advance, holds over after the expiration of the agreed term, and pays the rent according to the agreement, which the landlord unconditionally accepts, a tenancy from year to year is created, in the absence of any proof from which want of consent by the landlord may be inferred.—Maier v. Champion, N. J., 117 Atl. 603.

56. **Licenses**—Blue Sky Law.—In a prosecution under the Blue Sky Law for the sale of stock, in which an information charged that defendant unlawfully sold the stock without a permit of the State Railroad Commission authorizing such sale, a conviction cannot be sustained as a violation of section 1753—50.1, making such sale as a broker illegal.—Wisniewski v. State, Wis., 189 N. W. 142.

57. **Master and Servant**—Agency.—Where an employee going with others for a piece of granite was expected to ride on a truck in order to reach the granite shop with the others, an accident while riding on the truck arose out of the employment within Employers' Liability Act.—Sears v. Peytral, La., 92 So. 561.

58.——Assumed Risk.—The rule that a person is the best judge of his own strength and lifting capacity, and that a servant is not entitled to recover damages from his master for a strain or injury resulting from an overexertion in that respect, when the occasion presents no emergency requiring hasty action, the situation is in no way complicated and the task is plainly observable, followed and applied. In such case the servant assumes the risk.—Kampeen v. Chicago & N. W. Ry. Co., Minn., 189 N. W. 123.

59.——Award.—The right of a widow to participate in the state insurance fund is not lost by the death of such widow before an award has been rendered thereon, but the legal representative of such widow, in the absence of other dependents, is entitled to an award covering the period from the time of the death of the employee until the death of such widow.—Industrial Commission v Dell, Ohio, 135 N. E. 669.

60.——Compensation.—An employee suffering an injury to his eye causing permanent impairment of the vision is entitled to compensation, although the vision can be rendered normal by the use of glasses. —Johannsen v. Union Iron Works, N. J., 117 Atl. 539.

61.——Subcontractors.——A subcontractor, using a staging built and furnished by the principal contractors, competent and reputable builders of stagings, is liable to his employee for injury by collapse of the staging due to defects discoverable by reasonable inspection.—Elliott v. Douglas, N. H., 117 Atl. 593.

62. **Mortgages**—Amount of.—A conclusion of law that a mortgage should be foreclosed for the amount of the mortgage debt was warranted by a special finding that one who contested foreclosure, on the ground that he owned the mortgaged land, had bargained to purchase certain land from the mortgagors, and take it subject to a mortgage for $100,000, that it was conveyed to him subject only to a mortgage for $75,000, and he agreed that the mortgagors might negotiate a loan for $25,000 on other of his land, and retain the proceeds to make up the difference, that he deeded this land to them therefor, and had the deed recorded, and that the mortagee loaned to the mortgagors in good faith in reliance on their apparent title and claimant's acts in aiding them to perfect their title and without knowledge or notice of any rights of claimant in the mortgaged land except as a tenant.—Bryan v. Reiff, Ind., 135 N. E. 886.

63. **Municipal Corporations**—Electric Current.—In an action against a city for the death of one electrocuted by a current transmitted from high voltage wires through a tree to a low voltage service wire, where plaintiff contended that the diversion was momentary when a tree branch touched both wires, evidence that at other times, months before, the service wire had caused momentary fires in trees through which it passed, that the city fire department and trouble men from the electric plant were called, and that the current was shut off on that account, was competent as tending to prove that defendant knew, or by exercising diligence should have known of the condition in time to have cut down or trimmed the tree.—City of Logansport v. Green, Ind., 135 N. E. 657.

64. **Railroads**—Reasonable Care.—While both the motorman of the car approaching a highway crossing and a traveler seeking to cross the tracks can assume that the other will use all the care and caution that the situation reasonably requires, failure of either to use such care will not justify the other in taking unnecessary risks, or relieve him of the duty of exercising reasonable care to avoid injury. Owens v. Wilmington & P. Traction Co., Del., 117 Atl. 454.

65. **Sales** — Permits. — Where, notwithstanding war conditions, the buyer of 12 cars of lumber agreed to furnish government permits for moving the cars, the failure of the buyer to secure the permits for lumber bought on March 24, 1918, till April 27, 1918, and then securing a permit for 3 cars only, was sufficient ground for the seller's cancellation of the order.—Empire Lumber Co. v. Parshelsky Bros., N. Y., 194 N. Y. Supp. 670

66. **Taxation**—Error of Assessor.—In view of Revenue Act, § 191, the fact that railroad tracks owned and used by four companies as a connection for interchange of freight were erroneously assessed in the name of a fifth corporation does not afford ground for restraining collection.—Michigan Cent. R. Co. v. Carr, Ill., 135 N. E. 881.

67.——Mines.—Under Const. Wyo. art. 15 § 3, providing that all mines from which valuable deposits are produced shall be taxed in addition to the surface improvements, "and in lieu of the taxes on the lands on the gross products thereof," in proportion to the value thereof, the annual tax on a coal mine may properly be levied on the assessed value of the coal produced during the year after it has been taken from the mine, though it is shipped and sold as fast as produced, and the assessment is not illegal because such value includes the cost of mining.—Lion Coal Co. v. Bunten, Wyo., 280 Fed. 887.

68. **Warehousemen**—Liability.—Where bales of tobacco stored in a bonded warehouse were damaged by dripping water, that the bales were in the joint custody of the United States customs officials and the warehouseman did not relieve the warehouseman from liability to owner for damages arising from his negligence.—Schwartz v. Michigan Warehouse Co., Mich., 189 N. W. 1.

69. **Water and Water Courses**—Valid Contract.—Where the bondholders of an irrigation district proposed to surrender a part of the bonds and to accept payment of the balance in smaller installments at lower interest, if the United States would take over the district, and provided that the details of the taking over should be worked out by a board composed of the persons named in the proposal, the bondholders cannot object to the details as worked out by the board so appointed by them, unless they invalidated the contract with the United States, so as to defeat the consideration for the bondholders' agreement.—New York Trust Co. v. Farmers' Irr. Dist., U. S. C. C. A., 280 Fed. 785.

70. **Wills**—Undue Influence.—Where the will is attacked on the ground of undue influence, a declaration by testator, made some time before the execution of the will, that he intended to give his property to the sister whom he made beneficiary under his will, was admissible as tending to show that nothing which occurred about the time the will was made had operated to change his attitude.—Portner v. Portner's Ex'rs, Va., 112 S. E. 762.

71. **Workmen's Compensation Act**—Constitutional Workmen's Compensation Act, pt. 1, § 7 (Comp. Laws 1915, § 5429), abrogating the parent's right of action for loss of services of a minor child employed under the act, held constitutional; the parent having no vested right in the value of the minor's services that cannot be taken away by the Legislature.—Wall v. Studebaker Corporation, Mich., 189 N. W. 58.